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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 BEN SMITH as the Personal
9 Representative for the ESTATE OF
10 MATTHEW S. SMITH, et al.,

11 Plaintiffs,

12 v.

13 PIERCE COUNTY, et al.,

14 Defendants.

CASE NO. C16-5667 BHS

ORDER GRANTING MOTION TO
COMPEL

15 This matter comes before the Court on Plaintiffs the Estate of Matthew Smith, Ben
16 Smith, and Nona Smith's ("Plaintiffs") motion to compel (Dkt. 36). The Court has
17 considered the pleadings filed in support of and in opposition to the motion and the
remainder of the file and hereby grants the motion for the reasons stated herein.

18 **I. PROCEDURAL AND FACTUAL BACKGROUND**

19 On July 29, 2016, Plaintiff filed a complaint against Defendant Pierce County
20 ("County"), NaphCare, Inc. ("NaphCare"), Nandi Brumidge, and Tae Kim asserting
21 numerous claims, including a claim against NaphCare for violation of Plaintiffs'
22 Fourteenth Amendment rights. Dkt. 1. The claims are based on the death of Matthew

1 Smith who died as a pretrial detainee in the County's custody and under the medical care
2 of NaphCare. *Id.*

3 Relevant to the instant motion, NaphCare conducted a mortality review
4 approximately two weeks after Matthew Smith passed. NaphCare's employee, Dr. Emily
5 Feely, led the review and NaphCare has produced the minutes of the review committee's
6 meeting. NaphCare, however, has objected to Plaintiffs' request to depose Dr. Feely.

7 On October 5, 2017, Plaintiffs filed a motion to compel the deposition. Dkt. 36.
8 On October 12, 2017, NaphCare responded. Dkt. 39. On October 19, 2017, Plaintiffs
9 replied. Dkt. 42.

10 II. DISCUSSION

11 NaphCare objects to the deposition because Dr. Feely's testimony is irrelevant, the
12 content is protected, and Plaintiffs should not decide which NaphCare employee may be
13 deposed. Dkt. 39. NaphCare's objections are without merit. Dr. Feely's testimony may
14 be relevant to the circumstances surrounding Matthew Smith's death. Binding Ninth
15 Circuit precedent holds that mortality reviews are not privileged. *Agster v. Maricopa*
16 *Cty.*, 422 F.3d 836, 839 (9th Cir. 2005). Finally, there is no precedent for the position
17 that Plaintiffs are only entitled to depose the person most knowledgeable with the
18 mortality review. Even if this were true, NaphCare has failed to show that Dr. Feely, the
19 individual who led the mortality review, is not the person most knowledgeable with the
20 review. Therefore, the Court concludes that NaphCare shall produce Dr. Feely for a
21 deposition.

22 The Court finds that fees are not warranted.

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Dated this 9th day of November, 2017.


BENJAMIN H. SETTLE
United States District Judge